

(File)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
)	
City of Lowell)	DOCKET NO. 03-22
Lowell Regional Water and Wastewater)	
Utility)	
First Street Boulevard (Route 110))	FINDINGS OF VIOLATION
Lowell, Massachusetts 01850)	
)	AND
NPDES Permit No. MA0100633)	
)	ORDER FOR COMPLIANCE
Proceedings under Section 309(a)(3))	
of the Clean Water Act, as amended,)	
33 U.S.C. §1319(a)(3))	

I. STATUTORY AUTHORITY

The following findings are made and ORDER issued pursuant to Section 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §1319(a)(3), which grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318 and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. §1342. This authority has been delegated to EPA's Regional Administrators, and has in turn been delegated to the Director of the Office of Environmental Stewardship (the "Director of OES").

The Order herein is based on findings of violations of Section 301(a) of the Act, 33 U.S.C. §1311(a), and the conditions of NPDES Permit No. MA0100633. Pursuant to

Section 309(a)(5)(A) of the Act, 33 U.S.C. §1319(a)(5)(A), the Order provides a schedule for compliance which the Director of OES has determined to be reasonable.

II. FINDINGS

The Director of OES makes the following findings of fact:

1. The City of Lowell (the "Permittee") is a municipality established under the laws of the Commonwealth of Massachusetts. The Permittee is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. §1362(4), and therefore is a person under Section 502(5) of the Act, 33 U.S.C. §1362(5).
2. The Permittee is the owner and, through the Lowell Regional Water and Wastewater Utility, a department of the City of Lowell, operator of a publicly owned treatment works (the "Facility") and nine combined sewer overflows ("CSOs") from which it discharges pollutants, as defined in Section 502(6) and (12) of the Act, 33 U.S.C. §1362(6) and (12), from point sources, as defined in Section 502(14) of the Act, 33 U.S.C. §1362(14), to the Merrimack River, the Concord River, and Beaver Brook. Combined Sewer Overflows are discharges prior to the Facility from a sewer system designed to convey both sanitary sewage and stormwater in a common pipe. The Facility is designed to discharge an average monthly flow of 32 million gallons per day ("MGD") of treated wastewater to the Merrimack River, a Class B waterway and navigable water under Section 502(7) of the Act, 33 U.S.C. §1362(7).
3. On August 14, 1997, the Permittee was reissued NPDES permit No. MA0100633 ("the Permit") by the Director of the Office of Ecosystem Protection (the "Director

of OEP") pursuant to the authority given to the Administrator of EPA by Section 402 of the Act, 33 U.S.C. §1342. This authority has been delegated to EPA's Regional Administrators and has in turn been delegated to the Director of OEP. The Permit became effective on September 13, 1997, and expired on August 14, 2002. The Permittee submitted a timely application for reissuance of the Permit. Therefore, pursuant to 5 U.S.C. §558(c) and 40 CFR §122.6, the conditions of the Permit will remain in effect until the effective date of a new Permit.

4. The Permit authorizes the Permittee to discharge pollutants from specific point sources from the combined sewer system (i.e., the CSOs) to the Merrimack and Concord Rivers and Beaver Brook provided that, inter alia, the discharges shall not cause exceedances of Federal or State Water Quality Standards.
5. Section 301(a) of the Act, 33 U.S.C. §1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, inter alia, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. §1342.
6. EPA finds that discharges of pollutants from the Permittee's CSOs caused or contributed to exceedances of the water quality standards for coliform bacteria in the Merrimack and Concord Rivers and Beaver Brook.
7. EPA finds that the Permittee's discharges of pollutants from its CSOs that caused exceedances of water quality standards occurred in violation of the Permit and Section 301(a) of the Act, 33 U.S.C. §1311(a).

III. ORDER

Based on the foregoing findings, it is hereby ORDERED that:

1. By July 1, 2003, the Permittee shall initiate implementation of the Revised Phase I CSO Long-Term Control Plan (the "Phase I Plan") presented in the Permittee's November 22, 2002 letter to the Massachusetts Department of Environmental Protection ("DEP"), including construction of the Remote Diversions, Wastewater Treatment Plant Wet Weather Modifications, and Varnum Avenue Sewer Separation.
2. By August 15, 2003, the Permittee shall submit to the Massachusetts Executive Office of Environmental Affairs ("EOEA") a request for a partial waiver of the MEPA requirements for the Tilden Street Safety Improvements, Tilden Street Inline Storage, Beaver Brook CSO Inline Storage, Read Street CSO Modifications, and Merrimack River Relief Structure Modifications.
3. By October 15, 2003, the Permittee shall submit to DEP plans and specifications meeting the requirements of the SRF program for the Tilden Street Safety Improvements, Tilden Street Inline Storage, Beaver Brook CSO Inline Storage, Read Street CSO Modifications, and Merrimack River Relief Structure Modifications.
4. Within 6 months of approval of the design plans by DEP, the Permittee shall begin construction of the Tilden Street Safety Improvements, Tilden Street Inline Storage, Beaver Brook CSO Inline Storage, Read Street CSO Modifications, and Merrimack River Relief Structure Modifications.

5. Within 24 months of beginning construction of the Tilden Street Safety Improvements, Tilden Street Inline Storage, Beaver Brook CSO Inline Storage, Read Street CSO Modifications, and Merrimack River Relief Structure Modifications, the Permittee shall complete construction and commence full operation of these facilities.
6. By September 1, 2003, the Permittee shall submit to EPA and DEP a scope of work and schedule for a preliminary design study of sewer separation in the Warren Street "A" basin. The preliminary design study shall identify the extent and nature of sewer separation to be included in the Revised Phase I project, and shall include a proposed schedule for construction of the sewer separation projects.

IV. NOTIFICATION PROCEDURES

1. Where this Order requires a specific action to be performed within a certain time frame, the Permittee shall submit a written notice of compliance or noncompliance with each deadline. Notification must be mailed within fourteen (14) days after each required deadline. The timely submission of a required report shall satisfy the requirement that a notice of compliance be submitted.
2. If noncompliance is reported, notification should include the following information:
 - a. A description of the noncompliance;
 - b. A description of any actions taken or proposed by the Permittee to comply with the elapsed schedule requirements;

- c. A description of any factors which tend to explain or mitigate the noncompliance;
 - d. An approximate date by which the Permittee will perform the required action.
3. If any event occurs which will cause noncompliance with any requirement of this order, the Permittee shall notify EPA and DEP in writing within ten (10) days of the date on which the Permittee knew or should have known by the exercise of due diligence of such event . This notice shall include the information set out in paragraph IV.2 above. If it is determined by EPA that the noncompliance has been or will be caused entirely by circumstances beyond the control of the Permittee or any entity controlled by the Permittee, including its consultants and contractors, and that the Permittee could not have foreseen and prevented such noncompliance, the time for performance of the affected requirements shall be extended in writing by EPA for a period not to exceed the actual unavoidable delay resulting from such circumstances.
4. After a notification of noncompliance has been filed, compliance with the past requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved.
5. Submissions required by this Order shall be in writing and should be mailed to the following addresses:

U.S. Environmental Protection Agency
1 Congress Street,
Suite 1100, (SEW)
Boston, MA 02114 - 2023
Attn: George W. Harding, P.E.

MA Department of Environmental Protection
Northeast Regional Office
One Winter Street
Boston, MA 02108
Attn: Kevin Brander, P.E.

V. GENERAL PROVISIONS

- I. The Permittee may, if it desires, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. §2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the Permittee. The Permittee should read the above-cited regulations carefully before asserting a business confidentiality claim since certain categories of information are not properly the subject of such a claim. For example, the Clean Water Act provides that "effluent data" shall in all cases be made available to the public. See Section 308(b) of the Act, 33 U.S.C. § 1318(b).
2. This Order does not constitute a waiver or a modification of the terms and conditions of the Permit. The Permit remains in full force and effect. EPA reserves the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Order.

3. This Order shall become effective upon receipt by the Permittee.

6/13/03

Date

A handwritten signature in black ink, appearing to read "Stephen S. Perkins", written over a horizontal line.

Stephen S. Perkins, Director
Office of Environmental Stewardship
EPA- New England

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

MEMORANDUM

DATE: September 8, 1988

SUBJ: Proposed Consent Decree in the case of United States v. City of Lowell, C.A. No. 87-0688-N (D.Mass.)

FROM: Harley F. Laing *HL*
Regional Counsel

TO: Thomas L. Adams, Jr.
Assistant Administrator for Enforcement
and Compliance Monitoring

Enclosed is a proposed consent decree in the case of United States v. City of Lowell. This represents the settlement of a civil action brought pursuant to Section 309 of the Clean Water Act. The defendant and co-plaintiff Commonwealth of Massachusetts have signed the document, which we are now submitting for your signature and for signatures at the Department of Justice.

On August 4, 1986, EPA referred to the Department of Justice a case involving violations of the Clean Water Act by the City of Lowell, Massachusetts. The complaint was filed in U.S. District Court in Massachusetts on March 23, 1987. The Court granted the United States' motion for partial summary judgment on liability on March 2, 1988. Negotiations among Assistant U.S. Attorney Andrew Hogeland, EPA attorney Ann Williams-Dawe, Massachusetts Assistant Attorney General Nathaniel Lawrence and Lowell's City Solicitor have resulted in agreement on the terms of the proposed consent decree. Alan Morrissey and Kathy Summerlee of the Office of Enforcement and Compliance Monitoring have been kept informed of the issues in the case and have reviewed the provisions contained in the decree.

Nature of the Case

1. The Defendant

The City of Lowell owns and operates a regional POTW which includes the Lowell wastewater treatment facility and combined sewer overflows ("CSOs"). The treatment plant is designed to provide secondary treatment for a daily average flow of 32 mgd of wastewater and sewage from Lowell, the towns of Tewksbury and Dracut, and portions of the towns of Tyngsboro and Chelmsford, Massachusetts. The treatment plant discharges effluent to the Merrimack River. The CSOs discharge to the Pawtucket Canal, the Concord River, Beaver Brook, and the Merrimack River.

2. Causes of Action

The statute and regulations which provide the basis of this action are:

- o Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311 (a);
- o Sections 307(b) and (d) of the Clean Water Act, 33 U.S.C. §§ 1317(b) (and (d));
- o Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and (d);
- o Forty C.F.R. Part 403.

The complaint in this action alleged numerous violations by Lowell of its NPDES permits and three administrative orders. Specifically, since May, 1984 Lowell failed to meet one or more of the effluent limits on BOD, TSS, SS, fecal coliform bacteria, and total coliform bacteria. Lowell also violated permit requirements to eliminate certain combined sewer overflows and dry weather discharges of untreated sewage. Third, Lowell violated the requirements in its permits and in two administrative orders that it develop, obtain approval of, and implement a pretreatment program. Finally, Lowell violated its permits' operation and maintenance provisions and an administrative order by failing to employ adequate supervisory control and sufficient staff to operate and maintain the treatment facility and by failing to maintain various pieces of equipment at the plant in good working order.

3. Other Parties

The Commonwealth of Massachusetts is a party by virtue of Section 309(e) of the Act, and it filed a motion to intervene as a plaintiff. The United States took the lead in preparing the summary judgment motion and conducting the negotiations. The State provided substantial legal and technical support and participated actively in all aspects of the case.

4. National or Precedential Issues

None.

Discussion of Settlement

1. Civil Penalty

Lowell has agreed to pay a total civil penalty of \$ 180,000, half of which is payable to the United States and half to the State. The penalty must be paid within thirty days of entry of the decree. The penalty comports with the Clean Water Act Civil Penalty Policy for settlements. It is the second largest cash penalty ever assessed by Region I against a municipality in a Clean Water Act case.

2. Compliance Schedule

The consent decree establishes schedules to address all of the violations alleged in the complaint. They include the following:

a. Treatment plant upgrade

Lowell must rehabilitate, modify, or install various pieces of equipment identified in the decree in accordance with specified schedules. Final operational levels must be attained by a variety of dates, the latest date being April 1, 1989. Lowell must also implement a preventive maintenance program by December 1, 1988.

b. Interceptor Construction Program

The decree establishes a schedule for completing 3 interceptor projects and eliminating discharges from 6 existing outfalls. Untreated dry weather discharges will be eliminated by January 15, 1989, April 15, 1989, and January 15, 1990.

c. Combined Sewer Overflows Program

The decree establishes a schedule for Lowell to prepare a scope of work, and a draft and final supplemental CSO facilities plan. The final plan must be submitted by March 1, 1990. The parties are further required to complete negotiations, by June 1, 1990, regarding the CSO abatement projects to be implemented and schedules for their implementation.

d. Pretreatment Program

Lowell has satisfied the requirements in the decree relating to additional submissions necessary to obtain pretreatment program approval. The remainder of the pretreatment

requirements in the decree relate to ongoing implementation and reporting requirements.

e. Other

The decree also requires Lowell to complete hiring of all necessary staff, submit and implement a financial plan, and submit and implement a proposal for measuring and reporting bypasses.

3. Stipulated Civil Penalties

Lowell must pay stipulated penalties to the United States and Massachusetts for failure to comply with the various requirements in the decree, including schedules, reporting requirements, and effluent limitations.

Recommendation

Lowell has been diligent in complying with the requirements of the decree during final negotiations and has made substantial progress towards improving overall operations. The Region recommends that the consent decree, as signed by Lowell and Massachusetts, be signed by the representatives of the United States.

Regional Contact

Ann H. Williams-Dawe, Senior Assistant Regional Counsel, will answer any questions concerning this case. She may be reached at FTS 835-3292.